

**REMARKS/ARGUMENTS**

**Status of the Claims**

Upon entry of the present amendment, claims 74-109 are pending. Claims 1-73 are canceled and new claims 74-109 are added. Because the probes, methods and apparatus of new claims 74-109 represent one embodiment of the earlier presented probes, methods and apparatus of claims 1-73, the inventions of new claims 74-109 are within the scope of claims 1-73. Applicants submit that no new matter is added, and therefore respectfully request entry of the present amendment.

New claims 74, 76, 79, 81, 87, 90-93, 95 and 98-101 find support, for example, on page 20, lines 14-17, Figures 17A and 17B, and on page 67, line 18 through page 68, line 11.

New claims 75, 83 and 94 find support, for example, on page 68, lines 7-11.

New claims 78, 84 and 97 find support, for example, on page 42, lines 3-7, and on page 44, lines 21-24.

New claims 80, 85, 88 and 102-108 find support, for example, on page 7, lines 22-24, on page 8, lines 13-17, and on page 51, lines 3-6.

New claims 77, 86, 89 and 96 find support, for example, on page 29, lines 22-23.

Support for new claim 82 is found, for example, on page 51, line 13 through page 52, line 12.

Support for new claim 109 is found, for example, on page 47, lines 1-17.

**Rejection under 35 U.S.C. 112, Second Paragraph**

The Examiner rejected claims 14-21 under Section 112, second paragraph. This rejection is rendered moot by the cancellation of claims 14-21.

**Rejections under 35 U.S.C. 102**

The rejections of claims 1-73 as allegedly anticipated over pages 1-2 of the specification, U.S. Patent No. 5,124,267 ("Humpel"), U.S. Patent No. 4,468,468 (Benninghoven), U.S. Patent No. 4,686,366 ("Stuke"), U.S. Patent No. 5,045,694 ("Beavis"), and U.S. Patent No. 4,988,879 ("Zare") is rendered moot by the cancellation of these claims.

To the extent that this rejection applies to new claims 74-109, none of the above listed references anticipate the probes, methods or apparatus of the present invention because none of them teach or suggest a probe comprising at least one sample presenting surface and a moiety that binds to biotin immobilized by chemical bonding to the sample presenting surface.

**Rejections under 35 U.S.C. 103**

The rejection of claims 1-73 as allegedly rendered obvious over U.S. Patent No. 5,209,919 ("Turteltaub") in view of Stuke is rendered moot by the cancellation of these claims.

To the extent that this rejection applies to new claims 74-109, neither Turteltaub nor Stuke, alone or combined, render obvious the probes, methods or apparatus of the present invention because none of them teach or suggest a probe comprising at least one sample presenting surface and a moiety that binds to biotin immobilized by chemical bonding to the sample presenting surface.

**Provisional Double Patenting Rejection over 10/882,608; 10/887,107; 10/728,442; 09/123,253**

The Examiner has provisionally rejected claims 1-73 under the provisionally created doctrine of obviousness-type double patenting over claims 74-125 of co-pending Application No. 10/882,608; claims 74-131 of co-pending Application No. 10/887,107; claims 1-31 of co-pending Application No. 10/728,442; and claims 1-31 of co-pending Application No. 09/123,253.

This provisional rejection is traversed to the extent that it applies to the probes, methods and apparatus of claims 74-109 because the present invention and claims of above-listed patent applications are directed to patentably distinct inventions. The claims of the above-listed patent applications do not teach or suggest a probe comprising at least one sample

presenting surface and a moiety that binds to biotin immobilized by chemical bonding to the sample presenting surface, a required element of the probes, methods and apparatus of the present invention.

**Provisional Double Patenting Rejection over 10/150,472; 10/626,303; 10/626,493; 10/124,626**

The Examiner has provisionally rejected claims 1-73 of the present application over claims 1-30 of U.S. Patent Application No. 10/150,472, claims 1-53 of U.S. Patent Application No. 10/626,493, claims 1-31 of U.S. Patent Application No. 10/626,303, and claims 1-50 of U.S. Patent Application No. 10/124,626 under the judicially created doctrine of obviousness-type double patenting.

This provisional rejection is traversed to the extent that it applies to the probes, methods and apparatus of claims 74-109 because the present invention and claims of above-listed patent applications are directed to patentably distinct inventions. The claims of the above-listed patent applications do not teach or suggest a probe comprising at least one sample presenting surface and a moiety that binds to biotin immobilized by chemical bonding to the sample presenting surface, a required element of the probes, methods and apparatus of the present invention.

**Double Patenting Rejection over U.S. Patent Nos. 5,894,063; 5,719,060; 6,027,942; 6,124,137; 6,528,320; 6,734,022, 6,818,411; 6,811,969; 6,579,719; and 6,225,047**

The Examiner has rejected claims 1-73 under the judicially created doctrine of obviousness-type double patenting over claims 1-47 of U.S. Patent No. 5,894,063; claims 1-20 of U.S. Patent No. 5,719,060; claims 1-54 of U.S. Patent No. 6,027,942; claims 1-61 of U.S. Patent No. 6,124,137; claims 1-45 of U.S. Patent No. 6,528,320; claims 1-20 of U.S. Patent No. 6,734,022; claims 1-13 of U.S. Patent No. 6,818,411; claims 1-34 of U.S. Patent No. 6,811,969; claims 1-27 of U.S. Patent No. 6,579,719; and claims 1-22 of U.S. Patent No. 6,225,047.

This rejection is traversed to the extent that it applies to the probes, methods and apparatus of claims 74-109 because the present invention and claims of above-listed patents are directed to patentably distinct inventions. The claims of the above-listed patents do not teach or

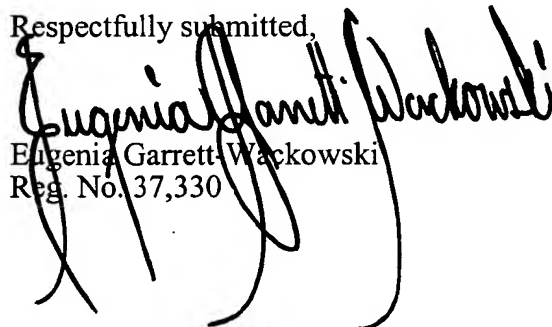
suggest a probe comprising at least one sample presenting surface and a moiety that binds to biotin immobilized by chemical bonding to the sample presenting surface, a required element of the probes, methods and apparatus of the present invention.

**CONCLUSION**

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 925-472-5000.

Respectfully submitted,



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